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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,406	09/16/2004	Reinhard Lihl	LVIP:114US	5405
24041	7590	02/08/2006	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			BENNETT, ZAHRA I	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/711,406	Applicant(s) LIHL ET AL.	
	Examiner Zahra Bennett	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/24/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 5, and 8-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Lihl et al. (US Publication 2004/0035275).

The applied reference has a common a cooling chamber comprising an illumination system comprised of five LEDs that emits light, a knife surrounded by the cooling chamber, wherein the knife defines a surface, and a stereomicroscope provided outside the cooling chamber for the observation of the surface of the knife, with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

With respect to claim 1, Lihl teaches a cooling chamber comprising an illumination system that emits light (Figure 3: 30), a knife (7) surrounded by the cooling chamber, wherein the knife defines a surface, and a stereomicroscope (Figure 4: 9) provided outside the cooling chamber for the observation of the surface of the knife, whereby the illumination system is arranged such that the emitted light is directed onto the surface of the knife in such a way that the light reflects from the surface toward the stereomicroscope ([0025] lines 2-12).

With respect to claim 2, Lihl teaches that the illumination system is constructed from several LEDs ([0025] lines 2-7).

With respect to claim 4, Lihl teaches that the illumination system is constructed from a first, a second, a third, a fourth, and a fifth LED (Figure 5: 41, see [0027] lines 7-8).

With respect to claim 5, Lihl teaches that the operation of the first and second LED implements an oblique system (Figure 4: 31a and 31b, see [0026] lines 2-13).

With respect to claims 6 and 14, Lihl teaches that the operation of the fourth and fifth LED (Figure 5: 41) implements an oblique illumination of the surface of the knife (7).

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With respect to claim 8, Lihl teaches a system of cooling chamber with a microtome (Figure 1: 1), comprising a knife (7) and the sample holder (3) are arranged in the cooling chamber and opposite to each other, a stereomicroscope position on the microtome wherein the stereomicroscope defines an optical axis (13), and the region of the cutting edge of the knife being observable with the stereomicroscope ([0023] lines 9-11), and an illumination system mounted in the cooling chamber emits light which is directed onto a surface of the knife in such a way that the light reflects from the surface toward the stereomicroscope ([0025] lines 2-12).

With respect to claim 9, Lihl teaches that the light reflects (Figure 4: 13a-b) from the surface substantially parallel to an optical axis (Figure 6: 13) of the stereomicroscope.

With respect to claim 10, Lihl teaches that the illumination system is constructed from several LEDs ([0025] lines 2-7).

With respect to claim 11, Lihl teaches that the operation of the first and second LED implements an oblique system (Figure 4: 31a and 31b, see [0026] lines 2-13).

With respect to claim 12, Lihl teaches that the illumination system is constructed from a first, a second, a third, a fourth, and a fifth LED (Figure 5, see [0027] lines 7-8).

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With respect to claim 13, Lihl teaches that the operation of the first and second LED implements an oblique system (Figure 4: 31a and 31b, see [0026] lines 2-13).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lihl as applied to claims 1 and 2 above, and further in view of Chein et al. (US Patent 5,871,271).

With respect to claim 3, Lihl teaches that segments of the LEDs are capable of being switched on in order to implement an oblique illumination of the surface of the knife ([0026] lines 2-13). Lihl does not teach that the LEDs are switch on and off individually. Chein teaches that the LEDs can be switched on and off individually (Column 2, lines 50-58). It would have been obvious to one of ordinary skill at the time of the invention to have the LEDs switch on and off individually on the device of Lihl for the benefit of creating various lighting effects, as taught by Chein.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lihl as applied to claim 1 above, and further in view of Sitte et al. (US Patent 4,284,894).

With respect to claim 7, Lihl teaches that the illumination system is mounted directly under the cooling chamber. Lihl does not teach that the cooling chamber is cup-shaped and is closed off by a lid having an opening. Sitte teaches that the cooling chamber is cup-shaped (Figure 1: 1, 1', 2) and is closed off by a lid having an opening (5). It would have been obvious to one of ordinary skill at the time of the invention to have the cooling chamber cup-shaped and closed off by a lid having an opening. One would have been motivated to modify the device Lihl for the fit of viewing the cutting process, as taught by Sitte.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lihl as applied to claim 8 above, and further in view of Sitte et al. (US Patent 4,284,894).

With respect to claim 15, Lihl teaches that the illumination system is mounted directly under the cooling chamber. Lihl does not teach that the cooling chamber is cup-shaped and is closed off by a lid having an opening. Sitte teaches that the cooling chamber is cup-shaped (Figure 1: 1, 1', 2) and is closed off by a lid having an opening (5). It would have been obvious to one of ordinary skill at the time of the invention to have the cooling chamber cup-shaped and closed off by a lid having an opening. One would have been motivated to modify the device Lihl for the fit of viewing the cutting process, as taught by Sitte.

With respect to claim 16, Lihl teaches the knife, the surface of the knife, the cutting edge, and the sample holder. Lihl does not teach a lid to observe the knife, the cutting edge, and the sample holder. Sitte teaches that the knife (Figure 1: 13), the surface of the knife, the cutting edge, and the sample holder (11) with the sample (12) are observable through the opening in the lid (5, Column 5, lines 15-21). It would have been obvious to one of ordinary skill at the time of the invention to have a lid to observe the knife, the cutting edge, and the sample holder. One would have been motivated to modify the device Lihl for the fit of viewing the cutting process, as taught by Sitte.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Behme et al. (US Patent 4,625,608) teaches a chamber comprised of an illumination system constructed from LEDs, whereby the LEDs are controlled with a switch, a sample holder, and a knife.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zahra Bennett whose telephone number is 571-272-2267. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on 571-272-2009. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ZB



RENEE LUEBKE
PRIMARY EXAMINER